



Signed and Filed: December 10, 2009

A handwritten signature in dark ink, appearing to read "T. E. Carlson", is written over a horizontal line.

THOMAS E. CARLSON  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re	)	Case No: 09-31696 TEC
	)	
DANILO M. MOLIERI,	)	Chapter 7
	)	
	)	
Debtor.	)	
	)	
DESERT PALACE, INC.,	)	
	)	Adv. Proc. No. 09-3159 TC
Plaintiff,	)	
	)	
vs.	)	
	)	
DANILO M. MOLIERI,	)	Date: December 11, 2009
	)	Time: 9:30 a.m.
	)	Ctrm: Hon. Thomas E. Carlson
Defendant.	)	235 Pine St., 23rd Fl.
	)	San Francisco, CA

MEMORANDUM RE DEFENDANT'S MOTION TO DISMISS

Upon due consideration, and for the reasons stated below, the court denies Defendant's motion to dismiss the complaint.

The complaint asserts a single claim for denial of discharge under section 523(a)(2)(C), based on an alleged gambling debt in the sum of \$150,000, incurred 27 days before Defendant filed for chapter 7 bankruptcy relief. Compl., ¶¶ 5-11.

1       The Bankruptcy Code does not define "luxury goods or  
2 services." Rather, it provides that such goods or services do not  
3 include goods or services "reasonably necessary for the support or  
4 maintenance of the debtor or a dependent of the debtor." 11 U.S.C.  
5 § 523(a)(2)(C)(ii)(II). Whether a gambling debt was reasonably  
6 necessary for the support of maintenance of a debtor or a debtor's  
7 dependent is a question of fact, because it turns on the purpose  
8 for which Debtor engaged in the gambling. Assuming, *arguendo*, that  
9 the sole case cited by Defendant in support of his motion to  
10 dismiss were binding on this court, it does not hold, as a matter  
11 of law, that gambling debts are reasonably necessary for the  
12 support of debtor. Rather, the court denied creditor's section  
13 523(a)(2)(C) claim on the *evidence* that Debtor gambled in a failed  
14 effort to earn money to repay the creditors of his foundering  
15 automobile sales business. In re Hall, 228 B.R. 483, (Bankr. M.D.  
16 Ga. 1998).

17                               **\*END OF MEMORANDUM\*\***  
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